Supreme Court, U.S.
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83-1724

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

LOUISE C. GRIFFIS,
Petitioner

v.

DELTA FAMILY-CARE DISABILITY AND SURVIVORSHIP PLAN and DELTA FAMILY-CARE MEDICAL PLAN,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

In the administration of private pension funds subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. §1001, et seq.), when plan fiduciaries act to construe a provision of a plan and thereby deny benefits to a beneficiary, is the applicable judicial standard of review whether such action is in accordance with the statutory standard for fiduciary conduct set forth in the Employee Retirement Income Security Act, rather than the pre-ERISA standard whether their action was arbitrary and capricious?

PARTIES TO THIS PROCEEDING

The party-plaintiff to this proceeding is Lousie C. Griffis.

The party-defendants to this proceeding are Delta Family-Care Disabi-

lity and Survivorship Plan and Delta Family-Care Medical Plan.

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IN THE

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LOUISE C. GRIFFIS,
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v.

DELTA FAMILY-CARE DISABILITY AND SURVIVORSHIP PLAN and DELTA FAMILY-CARE MEDICAL PLAN,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Petitioner Louise C. Griffis requests that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Eleventh Circuit entered on January 23, 1984, and issued as mandate on February 15, 1984.

OPINION BELOW

The opinion of the Court of Appeals (A-) is officially reported as Griffis v. Delta Family-Care Disability, 723 F2d 822 (11th Cir. 1984). The opinion of the District Court forms the appendix to the opinion of the Court of Appeals. The opinion of the District Court was not officially reported.

JURISDICTION

The judgment of the Eleventh Circuit Court of Appeals was dated and entered January 23, 1984. (A-17). This Court's jurisdiction is invoked under 28 U.S.C. §1254 (1).

STATUTES INVOLVED

This case was brought under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1001, et seq. (A- 19). This case principally

involves the following sections of that act: §402 (29 U.S.C. §1102)(A-29); and §404 (29 U.S.C. §1104) (A-31).

STATEMENT OF THE CASE

I. Proceedings in the courts below

The petitioner, Louise C. Griffis, filed this action on February 10, 1982, in the Superior Court of Fulton County, State of Georgia. Named as defendants were Delta Family-Care Disability and Survivorship Plan and Delta Family-Care Medical Plan ("Delta Plans"). On March 25, 1982, Delta Plans removed the proceedings to the United States District Court for the Northern District of Georgia under provision of 28 U.S.C. §1441. The jurisdiction of the District Court was invoked under 29 U.S.C. §1132. The petitioner claimed in her complaint that she was entitled to be reinstated

as beneficiary of Delta Plans, to be paid for monthly income survivor benefits accrued since her termination as beneficiary on August 30, 1980, and to be reimbursed for her out of pocket medical expenses, not otherwise covered by insurance, incurred since the date of termination. The defendants responded in their answer that the plaintiff was not entitled to reinstatement nor to the claimed benefits under the plans.

Following discovery, cross-motions for summary judgment were filed. The District Court denied the petitioner's motion and granted the defendants' motion, entering final judgment for the defendants. The Eleventh Circuit affirmed the judgment of the District Court.

I. Facts

The petitioner, Louise C. Griffis, is the surviving spouse of Hugh C. Griffis, Jr. Mr. Griffis died on August 1, 1978 while an employee of Delta Airlines, Inc. He had been an employee of Delta Airlines, Inc. for some 32 years and died on the job. As Mr. Griffis spouse, Mrs. Griffis began receiving survivorship and income benefits and medical and dental insurance coverage under the Delta Plans. These Plans were established and are maintained under the provisions of the Employee Retirement Income Security Act of 1974.

On August 20, 1980 Mrs. Griffis married Collis Reed Newell. Thereafter, on November 12, 1980 the Plans notified her that her benefits would be terminated because of her remarriage. Termination was based on §4.01 of the Delta Plans which provides as follows:

> "The employee's spouse at the time of his death shall cease to be so covered from the time the spouse remarries. . ."

On April 1, 1981, some six months after benefits were terminated, Mrs. Griffis' marriage to Mr. Newell was annulled by Order of the Superior Court of Gwinnett County, Georgia. In its Order of Annulment, the court stated:

> "It is the judgment of the court that the purported marriage between the parties is decreed to be as if said purported marriage had never been contracted and entered into by them."

The court, in its Order, specifically found that Mr. Newell was not of sound mind and was not mentally competent to contract marriage with Mrs. Griffis. Thereafter, Mrs. Griffis formally requested of Delta Plans that her benefits be reinstated on the ground that she had not remarried as that term is used in §4.01 of the Delta Plans. This request

was initially denied by the General Manager of Delta Plans. Thereafter, both the Administrative Subcommittee and the full Administrative Committee of Delta Plans denied reinstatement of Mrs. Griffis' benefits. On October 15, 1981, the Administrative Committee issued its final decision as follows:

"The Administrative Committee of Delta Airlines, Inc. met on October 15, 1981 and considered your appeal from the decision of the Subcommittee that Mrs. Griffis cease to be an Eligible Family Member under the Disability and Survivorship Plan by reason of her marriage to Collis R. Newell, despite the subsequent annulment of that marriage.

The Committee considered the file and the evidence and case law submitted by

you and felt that such cases were distinguishable from Mrs. Griffis' claim because they pertain to statutory benefit programs and involved annulment statutes different from that in Georgia. Thus, the Committee determined that the Plan was not bound by these cases.

In addition, the Committee found that the intent of the Plan is to sever the right to monthly survivor benefits to a surviving spouse upon her remarriage, even if that marriage is later voided by annulment. The Committee felt that the loss of benefits was the responsibility of the second marriage, as that term is used in Georgia Statute 53-605 and that in accordance with the statute the annulment, although voiding the marriage from its inception, did not relieve the parties of responsibilities

occasioned by the marriage. As a result, the Committee voted unanimously to reaffirm the Subcommittee's decision."

On February 10, 1982, Mrs. Griffis filed suit.

REASONS FOR GRANTING THE WRIT

The Court of Appeals in this case, in adopting the opinion of the District Court, has decided an important question of federal law which has not been, but should be, settled by this Court.

This case arose under ERISA, a remedial statute which subjects employee benefit plans to a comprehensive regulatory scheme. ERISA was inacted for the stated purpose of curbing abusive practices in the establishment, maintenance and administration of such plans. 29 U.S.C. §1001 (A-17).

The District Court's opinion, as

affirmed by the Court of Appeals, stands for the proposition that retirement plan fiduciaries may act correctly in interpreting a provision of a plan even though their decision is wrong. Relying on Paris v. Profit Sharing Plan for Employees of Howard B. Wolf, Inc., 637 F2d 357, 362 (5th Cir. 1981), Riley v. M.E.B.A. Pension Trust, 570 F2d 406, 410 (2nd Cir. 1977), and Weisler v. Metal Polishers Union, 533 F.Supp. 209, 215 (S.D.N.Y. 1982), the District Court determined that in reviewing plan fiduciary conduct under ERISA in cases involving the interpretation and construction of a plan provision, the scope of judicial review is limited to a determination of whether the interpretation was made rationally and in good faith, not whether it was right or whether it was wrong.

Mrs. Griffis brought the present action seeking a judicial determination of whether the Administrative Committee of Delta Plans had correctly interpreted §4.01 of their plan documents. A determination was sought specifically with regard to whether or not she had remarried as that term is used in §4.01. On October 15, 1981, the Administrative Committee determined that notwithstanding the annulment of her marriage, Mrs. Griffis was not entitled to reinstatement of benefits because under the Georgia law of annulment, Ga. Code §53-605, she had not been relieved of certain responsibilities occasioned by the marriage. This was the only specific reason given by the Administrative Committee of Delta Plans for its decision to deny reinstatement. It was apparent, however, that the interpretation given

by the Administrative Committee of the Georgia law of annulment was entirely erroneous.[1] More importantly, the Administrative Committee in its decision went on to recognize that the term "remarries" as used in §4.01 means the status of a legally binding obligation. The Committee determined, however, that

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[1]In 1978 the Supreme Court of Georgia, in McKinney v. McKinney, 242 Ga. 607, 608, 250 SE2d 470 (1978), construed Ga. Code §53-605 and stated that the "responsibilities occasioned by the marriage" invisioned by the statute are primarily civil liabilities incurred by the parties to third persons during the course of the void marriage. They do not relate to any right of the wife to support as maintained by the Administrative Committee. The commentators agree that the interpretation placed on the statute by the Administrative Committee would render superfluous the entire proceedings for annulment. See, Note, Annulment in Georgia: A Product of Judicial Restraintand Legislative Confusion, 14 Ga. Law Review 81, 99 (1979). The Superior Court of Gwinnett County, Georgia, in declaring the marriage of Mrs. Griffis void ab initio, did not impose any civil liabilities upon either of the parties as a result of the annulment.

even though Mrs. Griffis never obtained such status, that is, even though she never remarried within the terms of the plans, her remarriage being voided from the inception, it was still the "intent" of the Plans to sever her benefits. The Committee thereby read directly into §4.01 a basis for the loss of benefits not contained in the provision as written.

In applying the arbitrary and capricious standard for review of the conduct of Delta Plans the District Court reached two far-reaching conclusions. First, the District Court concluded that even if the Committee's interpretation of the Georgia law of annulment, upon which its decision rested in part, was incorrect, this was "irrelevant" to the Court's review. Secondly, the District Court concluded that independent, ad

hoc, reasons for the Committee's actions in denying reinstatement of Mrs. Griffis' benefits could be used to support a rational basis for the Committee's action. In this regard, the Court accepted the arguments of Delta Plans in their brief that the decision to deny reinstatement was based on "concerns" for funding for such contingencies as annulments, for the possibility of collusion by parties in obtaining annulments, and further, for the possibility of some administrative inconvenience in reinstating the beneficiary. These reasons, the Court determined, established a rational basis for the action of the Administrative Committee, notwithstanding the specific terms of the provision under which reinstatement of benefits was claimed. Thus, even though Mrs. Griffis had clearly never remarried

as that term is used in §4.01 of the plans, and even though the Committee had recognized that fact, the Court allowed the denial of benefits to stand on grounds not included in the plans as written.[2]

The judicial review of the plan fiduciaries' conduct employed by the District Court did not entail a determination whether the ERISA statutory standard of fiduciary responsibility had been satisfied. The mandate of Congress in the Employee Retirement Income Security Act is this:

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[2]The reasons so stated by the court in its opinion were "concerns" which were argued in Delta Plans' briefs. Delta Plans did not introduce any evidence whatsoever that would support a finding that the "concerns" were substantiated. In fact, the Delta Plans had admitted previously that this was the only case in the history of Delta Plans in which a spouse following annulment had requested reinstatement. In any event, none of these "concerns" were incorporated in the plan documents.

> (a)(1) Every employee benefit plan shall be established and maintained pursuant to a written instrument. . .
>
> (b) Every employee benefit plan shall -
>
> (1) Provide a procedure for establishing and carrying out a funding policy and method consistent with the objectives of the plan and the requirements of this title,
>
> (2) describe a procedure under the plan for the allocation of responsibilities for the operation and administration of the plan. . .,
>
> (3) provide a procedure for amending such plan, and for identifying the persons who have authority to amend the plan, and
>
> (4) specify the basis on which payments are made to and from the plan.

29. U.S.C. §1102 (A-29). (Emphasis supplied.) The requirement that an employee benefit plan be written and contain four key elements is coupled with the mandate that

> (a)(1). . . a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and - . . .
>
> (D) In accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title or title IV.[3]

29 U.S.C. §1104 (A-31)

[3]The Joint Conference Report on ERISA noted that "[U]nder the Conference substitute, plan fiduciaries also must act in accordance with plan documents and instruments to the extent that they are consistent with the requirements established in the bill." 1974 U.S. CODE CONG & AD. News 5083. A similar comment was contained in the report accompanying the Senate Bill. Id., at 4988. The reports of the House Education and Labor Committee and the Senate Labor and Public Welfare Committee, which accompanied the bills in the House and Senate, respectively, stated: "The principles of fiduciary conduct are adopted from existing trust law, but with modification appropriate for employee benefit plans. These salient principles place a two-fold duty on every fiduciary to act in his relationship to the plans fund as a prudent man in a similar situation and under like conditions would act, and to act consistently with the principles of administering the trust for the exclusive purposes previously enumerated, and in

The requirement that the plan be established and maintained in writing is a safeguard to insure that "every employee may, on examining the plan documents, determine exactly what his rights and obligations are under the plan." Conference Committee Report, 1974 U.S. CODE CONG. & AD. News at 5077-5078. It is, therefore, manifest that parol affidavits and parol, ad hoc, declarations by plan fiduciaries in determining eligibility for benefits under a plan are not "plan documents" from which Congress intended that covered employees discern their rights and duties.[4]

3(Cont'd) accordance with the documents and instruments governing the fund unless they are inconsistent with the fiduciary principles of the section." Id. at 4651 and 4866. (Emphasis supplied.)

[4]Congress was particularly concerned about the effectiveness of communication of plan contents to

The decision of the District Court, affirmed without opinion, represents a significant erosion of the safeguards Congress wanted. The standard of review employed by the District Court grants to

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4(Cont'd) participants. The report accompanying both the Senate and House Bills noted that "Subcommittee findings were abundant in establishing that an average plan participant, even where he has been furnished with explanation of his plan provisions, often cannot comprehend them because of the technicalities and complexities of the language used." 1974 U.S.CODE CONG. AD. News, 4646 and 4847. The District Court's use of parol, ad hoc, unsubstantiated declarations of Delta Plans as contained in briefs to establish a rational nexus for their conduct in denying reinstatement of Mrs. Griffis' benefits under §4.01 of the Delta Plans is in direct conflict with the directive that the plan documents "specify the basis on which payments are made to and from the plan" and that the plan be administered in accordance with its governing documents. The worse fears of Congress are realized by this case, as no participant could have determined what constituted the plan, that is, whether a remarriage which was later voided ab initio would still result in a loss of benefits.

plan fiduciaries a license hardly envisioned by Congress. ERISA is an extremely comprehensive and carefully drawn piece of legislation. It represents the response of Congress to significant abuses which have occured in the private employee benefit system.[5] In light of the present weakness of the Social Security system and the consequent increasing importance of private pensions, it is imperative that the mandate of ERISA be unerringly carried out. This Court has stated in no uncertain

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[5]After conducting 12 years of investigation into abuses that stripped employees of benefits under private pension plans, Congress enacted ERISA to replace the Welfare and Pensions Plans Disclosure Act (Pub.L.No. 85-836, 72 Stat. 997 (1958). It had proved ineffective because of weak disclosure requirements and a still weaker enforcement mechanism. [1974] U.S. CODE CONG. & AD. News 4838, 4841.

terms that plan fiduciaries are obligated to carry out the terms of their trust unless modification is required to comply with applicable federal law. United Mine Workers v. Robinson, 455 U.S. 562 (1982). Indeed, the Court has stated that "ERISA essentially codified the strict fiduciary standards that a . . . trustee must meet." NLRB v. Amax Coal Co., 453 U.S. 322, 332 (1981).[6] Those standards include the stated obligation that the plan must be administered in accordance with governing plan documents.

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[6]Both Robinson and Amex Coal involved the question of fiduciary responsibilities under section 302 of the Labor Management Relations Act where the terms of the pension plans involved had been subjected to collective bargaining. There the trustees of the employee benefit trust funds did not fix the eligibility rules and benefit levels. These were fixed according to a collective bargaining agreement. In the present

Significantly, the lower federal courts have exhibited a great deal of confusion over the proper standard of judicial review of fiduciary conduct. Some have adopted the strictly arbitrary

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6(Cont'd)case the trustees fix the eligibility rules and benefit levels and are afforded broad discretion under Delta Plans in doing so. The Administrative Committee exercises, among other powers, the authority to "interpret the [Delta Plans] and determine questions of eligibility for participation and receipt of benefits." The District Court, in its opinion, seemed to indicate that such broad authority authorized the trustees to interpret the plan documents in any way they so chose as long as their interpretation was rational and even if such interpretation were wrong. Quite clearly, such broad authority given in the plan extends only to trustees action in amending the plan and making changes thereto so long as such changes are consistent with federal law. Once the plan document has been established, however, trustees, under the ERISA standards of responsibility, have no choice but to enforce the terms of the plan documents as written.

and capricious pre-ERISA standard to the exclusion of all others. See Paris v. Profit Sharing Plan, 637 F2d 357 (5th Cir. 1981) and Fine v. Semet, 514 F.Supp. 34 (S.D.Fla. 1981). On the other hand, some have adopted the form of judicial review requiring a determination of whether the ERISA statutory standards for fiduciaries of a pension fund, subject to Section 1104(a)(1) of ERISA, have been satisfied. Winpisinger v. Aurora Corp. of Ill., 546 F.Supp. 559 (N.D. Ohio 1978). Some have indicated that in a given circumstance both standards of review may be applied. See, Chambless v. Masters, Mates and Pilots Pension Plan, 571 F.Supp. 1430 (S.D.N.Y. 1983). In perhaps the most cited opinion in this field, Riley v. M.E.B.A. Pension Trust, 570 F.2d 406 (2nd Cir. 1977), Judge Friendly of the Second

Circuit Court of Appeals exhibited the same degree of confusion, deciding to rely, however, upon cases establishing the arbitrary and capricious rule which predated ERISA. The federal courts have, therefore, been unable to develop a consistent theory of judicial review of the conduct of plan fiduciaries.

CONCLUSION

This case involves an extremely important issue in the administration of private pension funds subject to the Employee Retirement Income Security Act. That issue is what standard of judicial review will be employed in judging fiduciary conduct under the Act. In the present case, the District Court has held that plan fiduciaries, in interpreting specific provisions of a plan, may act correctly even though their interpretation of the plan is wrong.

Under the arbitrary and capricious standard adopted by the District Court, plan fiduciaries are empowered to deny benefits to beneficiaries without regard to the specific provisions of their governing plan documents so long as there is some rational basis for the denial of benefits. Additionally, under such standards fiduciaries are allowed to justify their action by use of parol, ad hoc, declarations of eligibility for benefits not otherwise found in the written plans and, under the facts in the present case, unsubstantiated by evidence. Such a standard of judicial review is clearly in direct conflict with the Congressional directive that the plan documents specify the basis on which payments are made to and from the plan and that the plan be administered in accordance with its governing docu-

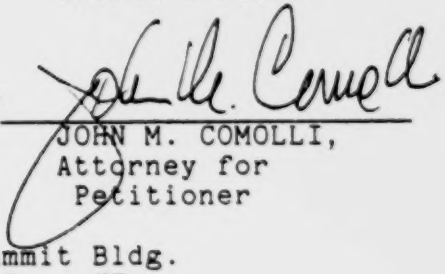
ments. The standard adopted also represents an abdication of the traditional role of courts in interpreting the meaning of contracts. Thus, the District Court's opinion has given to plan fiduciaries an almost unlimited discretion hardly envision by Congress and hardly consistent with common law. Finally, the lower federal courts have been markedly unable to develop a consistent theory of judicial review of plan fiduciaries under ERISA.

Because of the importance of the issue to the administration of private pension funds and because of the need for the Court to give guidance to the lower federal courts in reviewing fiduciary conduct under ERISA, the petition

for the Writ of Certiorari should be granted.

Respectfully submitted,

COHEN, POLLOCK,
COOPER & STAGG

BY 
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APPENDIX

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LOUISE C. GRIFFIS	)	
Plaintiff	)	
v.	)	CIVIL ACTION
DELTA FAMILY-CARE DISABILITY & SURVIVORSHIP PLAN and DELTA FAMILY-CARE MEDICAL PLAN,	)	FILE NO. C82-624A
Defendants	)	

JUDGMENT

This action came on for consideration before the Court, Honorable Richard C. Freeman, United States District Judge, presiding, and issues having been duly considered and a decision having been duly rendered.

It is Ordered and Adjudged finding for the defendants Delta Family-Care Disability & Survivorship Plan and Delta Family-Care Medical Plan and against the plaintiff Louise C. Griffis,

and that defendants recover of plaintiff their costs of this action.

Dated at Atlanta, Georgia, this 22nd day of December, 1982.

FILED AND ENTERED
IN CLERK'S OFFICE
this 22nd day of
December, 1982
BEN H. CARTER, Clerk

Ben H. Carter
Clerk of Court

BY: (s) _____ Deputy Clerk

By(s) _____
Deputy Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 83-8062

LOUISE C. GRIFFIS,

Plaintiff-Appellant,

v.

DELTA FAMILY-CARE DISABILITY & SURVIVORSHIP PLAN and DELTA FAMILY-CARE MEDICAL PLAN,

Defendants-Appellees

Appeal from the United States District Court for the Northern District of Georgia

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(January 23, 1984)

Before TJOFLAT and HILL, Circuit Judges, and LYNNE*, District Judge.

*Honorable Seybourn H. Lynne, U. S. District Judge for the Northern District of Alabama, sitting by designation.

PER CURIAM:

The District Court order fully and accurately covers all of the issues presented by this appeal. Therefore, we AFFIRM on the basis of the district judge's December 22, 1982 order, a copy of which is appended hereto.

AFFIRMED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LOUISE C. GRIFFIS,)

Plaintiff) C82-624A

v.)

DELTA FAMILY-CARE)
DISABILITY & SURVIVOR-
SHIP PLAN and DELTA)
FAMILY-CARE MEDICAL
PLAN,)

Defendants)

ORDER

RICHARD C. FREEMAN, District Judge.

Plaintiff commenced this action in

the Superior Court of Fulton County, Georgia, pursuant to the Employee Retirement Income Security Act (hereinafter "ERISA"), 29 U.S.C. §1001 et seq., seeking to recover benefits allegedly due her and to clarify her rights to future benefits under the terms of both the Delta Family-Care Disability and Survivorship Plan and the Delta Family-Care Medical Plan (hereinafter "Delta Plans"). The action was timely removed by the defendants, see 28 U.S.C. §1441(a), and is currently before the court on cross-motions for summary judgment, Rule 56, Fed.R.Civ.P.

A party who moves for summary judgment bears the exacting burden of demonstrating that there is no genuine dispute as to any material fact in the case. Adickes v. S.H. Kress & Co., 398 U.S. 144, 157, 90 S.Ct. 1598, 1608, 26 L.Ed.2d 142

(1970). In determining whether a movant has met this burden, the court must view the evidence and all factual inferences in the light most favorable to the party opposing the motion. Environmental Defense Fund v. Marsh, 651 F2d 983, 991 (5th Cir. 1981). If the record presents factual issues, the court must deny the motion and proceed to trial. Id. Furthermore, a court may discover questions of material fact even though both parties, in support of cross-motions for summary judgment, have asserted that no such questions exist. See, Donovan v. District Lodge No. 100, International Association of Machinists, 666 F2d 883, 886-87 (5th Cir. 1982); Wright and Miller, Federal Practice and Procedure: Civil §2720. Thus, before the court can consider the legal issues raised by the parties on cross-motions for summary

judgment, it must have no doubt as to the relevant facts that are beyond dispute.

After consideration of the statements of fact submitted by each party, the court concludes that the relevant facts are beyond dispute and that a grant of summary judgment is warranted in this action.

I. Findings of Fact

Plaintiff is the widow of Hugh C. Griffis, Jr., who died on August 1, 1978, while an employee of Delta Airlines, Inc. (hereinafter "Delta"). As Griffis' spouse, the plaintiff began receiving survivorship income benefits and medical and dental insurance coverage under the Delta Plans, which are employee benefit plans established and maintained by Delta under the provisions of ERISA. On August 20, 1980, the plaintiff married Collis R. Newell. Subsequently, on November 12, 1980, the Delta Plans notified the

plaintiff that her benefits would be terminated because of her remarriage. Termination was based on section 4.01 of the Delta Plans, which provides that an employee's surviving spouse shall cease to be eligible for benefits from the time such spouse remarries. On April 1, 1981, approximately six months after her benefits were terminated the plaintiff's marriage to Mr. Newell was annulled by the order of the Superior Court of Gwinnett County, Georgia, whose final decree stated

> It is the judgement of the Court that the purported marriage between the parties is decreed to be as if said purported marriage had never been contracted and entered into by them.

Plaintiff's Motion for Summary Judgment, Exh. B.

On January 9, 1981, prior to the annulment of her marriage, the plaintiff requested that the defendants reinstate

her benefits in the event that the marriage was annulled. The general manager of the Delta Plans informed the plaintiff on January 16, 1981, that the provisions of the Delta Plans did not provide for reinstatement of benefits after a beneficiary had remarried and denied her request for reinstatement. After the plaintiff's marriage had been annulled, the general manager's denial of reinstatement was reviewed and affirmed by both the Administrative Subcommittee and the Administrative Committee of the Delta Plans.

Under the terms of the Delta Plans, the Administrative Committee exercises, among other powers, the exclusive authority to "interpret the [Delta Plans] and determine questions of eligibility for participation and receipt of benefits." Defendants' Brief in support of

Motion for Summary Judgment, Affidavit of James W. Callison, dated August 6, 1982, Attachment 9. On October 15, 1981, the Administrative Committee sent the plaintiff the following notice of its decision:

> The Administrative Committee of Delta Airlines, Inc. met on October 15, 1981 and considered your appeal from the decision of the Subcommittee that Mrs. Griffis ceased to be an Eligible Family Member under the Disability and Survivorship Plan by reason of her marriage to Collis R. Newell, despite the subsequent annulment of that marriage.
>
> The Committee considered the file and the evidence and case law submitted by you and felt that such cases were distinguishable from Mrs. Griffis' claim because they pertained to statutory benefit programs and involved annulment statutes different from that in Georgia. Thus, the Committee determined that the Plan was not bound by these cases. In addition, the Committee found that the intent of the Plan is to sever the right to monthly survivor benefits to a surviving spouse upon her remarriage, even if that marriage is later voided by annulment. The

> Committee felt that the loss of benefits was the responsibility of the second marriage, as that term is used in Georgia Statute 53-605 and that in accordance with that statute the annulment, although voiding the marriage from its inception, did not relieve the parties of responsibilities occasioned by the marriage. As a result, the Committee voted unanimously to reaffirm the Sub-committee's decision.

Plaintiff's Motion for Summary Judgment, Exh. D. On March 25, 1982, the plaintiff filed this action.

II. Conclusions of Law

This court may disturb the decision of the Administrative Committee only if the plaintiff has established that the decision to deny her reinstatement was arbitrary or capricious. Paris v. Profit Sharing Plan for Employees of Howard B. Wolf, Inc., 637 F2d 357, 362 (5th Cir. 19810, cert. denied, 454 U.S. 836, 102 S.Ct. 140, 70 L.Ed. 2d 117 (1982). In reviewing the Administrative Committee's

interpretation of the remarriage provision of the Delta Plans, this court's "judicial role is limited to determining whether the [committee's] interpretation was made rationally and in good faith - not whether it was right." Riley v. MEBA Pension Trust, 570 F2d 406, 410 (2d Cir. 1977). Thus, the Administrative Committee's interpretation of the intent or meaning of the provisions of the Delta Plans need not be the best possible decision, only one with a rational justification. See, Weisler v. Metal Polishers Union, 533 F.Supp. 209, 215 (S.D.N.Y. 1982).

The court finds that there exists a rational basis for the Administrative Committee's decision. Defendants contend that permitting reinstatement of a spouse's benefits after annulment would threaten the efficient operation of the

Delta Plans. Defendants argue that

> [s]ince there is generally no statutory time limit for obtaining an annulment, the Plans could never be certain that a former beneficiary's marriage would not be annulled and the Plans' obligation to pay benefits reinstated. The Plans would be left dangling upon the uncertainties of the success or failure of that second marriage. Since Delta's contributions to the Plans are made upon actuarially determined requirements, there would be no adequate way of prefunding for such contingencies. Also, since the Plans would not be a party to the annulment proceedings, their future obligations would be determined by circumstances over which they had little or no knowledge or control. These uncertainties would affect both the operation and administration of the Plans as well as their ability to accurately project future funding needs. Statistical estimates of the number of annulments, in the population as a whole would be of no assistance in alleviating these uncertainties since incentives to obtain annulments for purposes of reinstating plan benefits are not present in the ordinary annulment case.

Defendants' Brief in Support of Motion for Summary Judgment at 12-13. Attempts to prevent unanticipated costs that may

limit the resources of an employee benefit plan are among the proper concerns of a plan's administrator. Paris v. Profit Sharing Plan for Employees of Howard B. Wolf, Inc., 637 F2d at 362. It is neither arbitrary nor capricious for the Administrative Committee to determine that permitting reinstatement of benefits for the plaintiff and other similarly situated spouses would threaten its ability to anticipate future funding needs.

Plaintiff argues that the decision of the Administrative Committee is unreasonable because the committee based its decision upon "an entirely erroneous interpretation of Georgia law." Plaintiff's Brief in Support of Motion for Summary Judgment at 10. Under Georgia law, the plaintiff argues, her annulled marriage to Mr. Newell "could not (and did not) give rise to any responsibility

or claim for support relieving [the defendants] of their obligations to provide support benefits to Plaintiff," id., and therefore the committee's contrary conclusion was an incorrect interpretation of Georgia Code Ann. §56-605 (recodified as Official Code of Georgia Ann.§33-5-52). However, the question of whether the Administrative Committee correctly interpreted section 56-605 is irrelevant to the present action. Even if one reason given by that committee would not alone justify the committee's decision, the existence of a separate, reasonable ground for that decision, in this case the committee's legitimate concern for correct anticipation of funding needs, requires this court to leave the defendants' denial of reinstatement undisturbed.

The record discloses no evidence

that either the Administrative Committee or any individual involved with administration of the Delta Plans has acted in bad faith in denying the plaintiff reinstatement of benefits. The court therefore will deny the plaintiff's motion for summary judgment and will grant the defendant's motion for summary judgment.

Accordingly, the plaintiff's motion for summary judgment is DENIED. Defendants' motion for summary judgment is GRANTED. The clerk is DIRECTED to enter final judgment for the defendant in this action.

SO ORDERED, this 22 day of December, 1982.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 83-8062

D.C. Docket No. C82-0624A

LOUISE C. GRIFFIS,

Plaintiff-Appellant,

v.

DELTA FAMILY-CARE DISABILITY and SURVIVORSHIP PLAN and DELTA FAMILY-CARE MEDICAL PLAN,

Defendants-Appellees

Appeal from the United States
District Court for the
Northern District of Georgia

Before TJOFLAT and HILL, Circuit Judges, and LYNNE*, District Judge

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*Honorable Seybourn H. Lynne, U.S. District Judge for the Northern District of Alabama, sitting by designation.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Georgia, and was argued by counsel;

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby, AFFIRMED;

It is further ordered that plaintiff-appellant pay to defendants-appellees, the costs on appeal to be taxed by the Clerk of this Court.

Entered: January 23, 1984

For the Court: Spencer D. Mercer, Clerk

ISSUED AS MANDATE:
February 15, 1984

BY: (s)
Deputy Clerk

EMPLOYEE RETIREMENT INCOME SECURITY ACT
TITLE I, SUBTITLE A, §2
29 U.S.C. §1001

§1001. Congressional findings and declaration of policy

(a) Benefit plans as affecting interstate commerce and the federal taxing power. The Congress finds that the growth in size, scope, and numbers of employee benefit plans in recent years has been rapid and substantial; that the operational scope and economic impact of such plans is increasingly interstate; that the continued well-being and security of millions of employees and their dependents are directly affected by these plans; that they are affected with a national public interest; that they have become an important factor affecting the stability of employment and the successful development of industrial relations; that they have become an important factor

in commerce because of the interstate character of their activities, and of the activities of their participants, and the employers, employee organizations, and other entities by which they are established or maintained; that a large volume of the activities of such plans is carried on by means of the mails and instrumentalities of interstate commerce; that owing to the lack of employee information and adequate safeguards concerning their operation, it is desirable in the interests of employees and their beneficiaries, and to provide for the general welfare and free flow of commerce, that disclosure be made and safeguards be provided with respect to the establishment, operation, and administration of such plans; that they substantially affect the revenues of the United States because they are afforded preferential

Federal tax treatment; that despite the enormous growth in such plans many employees with long years of employment are losing anticipated retirement benefits owing to the lack of vesting provisions in such plans; that owing to the inadequacy of current minimum standards, the soundness and stability of plans with respect to adequate funds to pay promised benefits may be endangered; that owing to the termination of plans before requisite funds have been accumulated, employees and their beneficiaries have been deprived of anticipated benefits; and that it is therefore desirable in the interests of employees and their beneficiaries, for the protection of the revenue of the United States, and to provide for the free flow of commerce, that minimum standards be provided assuring the equitable character of such plans and their

financial soundness.

(b) Protection of interstate commerce and beneficiaries by requiring disclosure and reporting, setting standards of conduct, etc. for fiduciaries. It is hereby declared to be the policy of this Act to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaires, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto, by establishing standards of conduct, responsibility, and obligation for fiduciaires of employee benefit plans, and by providing for appropriate remedies, sanctions and ready access to the Federal courts.

(c) Protection of interstate commerce, the Federal taxing power, and beneficiaries by vesting of accrued bene-

fits, setting minimum standards of funding, requiring termination insurance. It is hereby further declared to be the policy of this Act to protect interstate commerce, the Federal taxing power, and the interests of participants in private pension plans and their beneficiaries by improving the equitable character and the soundness of such plans by requiring them to vest the accrued benefits of employees with significant periods of service, to meet minimum standards of funding, and by requiring plan termination insurance.

EMPLOYEE RETIREMENT INCOME SECURITY ACT
TITLE I, SUBTITLE A, §3(a)
(2)(A), (7) and (14)
29 U.S.C. §1002

§1002. Definitions

For purposes of this title:

(1) The terms "employee welfare benefit plan: and "welfare plan" mean any plan, fund, or program which was heretofore or is hereafter established or

maintained by an employer or by an employee organization or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaires, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services or (B) any benefit described in section 302(c) of the Labor Management Relations Act, 1946 [29 U.S.C. §186(c)] (other than pensions on retirement or death, and insurance to provide such pensions).

(2)(A) Except as provided in subparagraph (B), the terms "employee pen-

sion benefit plan" and "pension plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program--

(i) provides retirement of income to employees, or

(ii) results in a deferral income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan. . .

(7) The term "participant" means any employee or former employee of any employer, or any member or former member

of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employee or members of such organization, or whose beneficiaries may be eligible to receive any such benefit. . .

(14) The term "party in interest" means, as to an employee benefit plan-

(A) Any fiduciary (including, but not limited to, any administrator, officer, trustee, or custodian), counsel, or employee of such employee benefit plan. . .

EMPLOYEE RETIREMENT INCOME SECURITY ACT
TITLE I, SUBTITLE B, PART I,
§104(b)(1) and (4)
29 U.S.C. §1024

§1024. Filing and furnishing of information

(b) Publication of summary plan description and annual report to par-

ticipants and beneficiaries of plan. Publication of the summary plan descriptions and annual reports shall be made to participants and beneficiaries of the particular plan as follows:

> (1) The administrator shall furnish to each participant, and each beneficiary receiving benefits under the plan, a copy of the summary, plan description, and all modifications and changes referred to in section 102(a)(1) [29 U.S.C. §1022(a)(1)]-
>
> (A) within 90 days after he becomes a participant, or (in the case of a beneficiary) within 90 days after he first receives benefits, or
>
> (B) if later, within 120 days after the plan becomes subject to this part. . .

(4) The administrator shall, upon written request of any participant or beneficiary, furnish a copy of the latest updated summary plan description, plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated. The administrator may make a reasonable charge to cover the cost of furnishing such complete copies. The Secretary may be [sic] regulation prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence. . .

EMPLOYEE RETIREMENT INCOME SECURITY ACT
TITLE I, SUBTITLE B, PART 4,
§402(a) AND (b)
29 U.S.C. §1102

§1102. Establishment of plan

(a) Named fiduciaries. (1) Every employee benefit plan shall be established and maintained pursuant to a written instrument. Such instrument shall provide for one or more named fiduciaries who jointly or severally shall have authority to control and manage the operation and administration of the plan.

(2) For purposes of this title, the term "named fiduciary" means a fiduciary who is named in the plan instrument, or who, pursuant to a procedure specified in the plan, is identified as a fiduciary (A) by a person who is an employer or employee organization with respect to the plan or (B) by such an employer and such an employee organization acting jointly.

(b) Requisite features of plan. Every employee benefit plan shall -

(1) provide a procedure for establishing and carrying out a funding policy and method consistent with the objectives of the plan and the requirements of this title,

(2) describe any procedure under the plan for the allocation of responsibilities for the operation and administration of the plan (including any procedure described in section 405(c)(1) [29 U.S.C. §1105(c)(1)]),

(3) provide a procedure for amending such plan, and for identifying the persons who have authority to amend the plan, and

(4) specify the basis on which payments are made to and from the plan. . .

EMPLOYEE RETIREMENT INCOME SECURITY ACT
TITLE I, SUBTITLE B, PART 4, §404(1)
29 U.S.C. §1104

§1104. Fiduciary duties

(a) Prudent man standard of care.

(1) Subject to section 403(c) and (d) [29 U.S.C. §1103(c) and (d)], 4042 [29 U.S.C. §1342], and 4044 [29 U.S.C. §1344], a fiduciary shall discharge his duties with respect to a plan soley in the interest of the participants and beneficiaries and--

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the

circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an interprise of a like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title or title IV.

CERTIFICATE OF SERVICE

This is to certify that I have this date served three copies of the above and foregoing Petition for the Writ of Certiorari on Helene Cohen, Esq. and D. Michael Keen, Esq., attorneys for respondents, Delta Family-Care Disability and Survivorship Plan and Delta Family-Care Medical Plan by placing a copy of same in the United States Mail, postage pre-paid and properly addressed as follows:

Helen Cohen, Esq.
D. Michael Keen, Esq.
Delta Air Lines, Inc.
Hartsfield Atlanta International Airport
Atlanta, Ga. 30320

This 20th day of April, 1984.

JOHN M. COMOLLI, ESQ.

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Office - Supreme Court, U.S
FILED
MAY 21 1984
ALEXANDER L. STEVAS
CLERK

No. 83-1724

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

LOUISE GRIFFIS,

Petitioner,

v.

DELTA FAMILY CARE DISABILITY AND SURVIVORSHIP PLAN and DELTA FAMILY CARE MEDICAL PLAN,

Respondents.

On a Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

---

BRIEF FOR RESPONDENTS IN OPPOSITION

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IN THE

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OCTOBER TERM, 1983

No. 83-1724

LOUISE GRIFFIS,

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DELTA FAMILY CARE DISABILITY AND SURVIVORSHIP PLAN and DELTA FAMILY CARE MEDICAL PLAN,

Respondents.

On a Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

---

BRIEF FOR RESPONDENTS IN OPPOSITION

STATEMENT OF THE CASE

Petitioner was the wife of Delta Air Lines, Inc. (Delta) employee Hugh Griffis, who died August 1, 1978. Following Griffis' death, Petitioner began receiving survivor benefits from the Delta Family-Care Disability and Survivorship Plan (D&S Plan) and the Delta Family-Care Medical Plan (Medical Plan) (collectively referred to as the Plans). Both Plans provide that for persons such as Petitioner, benefits from the Plans cease upon remar-

riage. Petitioner remarried in August, 1980.[1] She subsequently had this remarriage annulled and sought reinstatement of her benefits from the Plans. Petitioner was denied reinstatement upon the grounds that benefits from the Plans ceased upon remarriage and that determination was unaffected by the subsequent annullment.

The Plans are both non-negotiated, non-contributory ERISA welfare benefit plans which cover all of Delta's non-pilot employees.[2] The Plans provide that the Administrative Committee of Delta, who is the named fiduciary for administration of the Plans, has the sole authority to interpret Plan terms and determine eligibility for benefits. Following the initial denial of her claim, Petitioner pursued both levels of the Plans' administrative remedies provided under Section 503 of ERISA (29 U.S.C. § 1133) seeking reinstatement of her benefits. Upon its review of her claim, the Administrative Committee determined that Petitioner had remar-

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[1] Petitioner was aware that remarriage severed her eligibility for benefits from the D&S Plan and Medical Plan since prior to her marriage to Newell, she had contacted Delta's Group Insurance Department and was so informed.

[2] The D&S Plan, under which the survivor income benefit was paid, is a voluntary employee benefit association, tax exempt under Section 501(c)(9) of the Internal Revenue Code. Contrary to Petitioner's characterization, the Plans are not pension benefit plans as defined under ERISA and are not qualified under Section 401(a) of the Code. Retirement benefits are provided to non-pilot Delta employees, and in certain cases their survivors, from the Delta Family-Care Retirement Plan (Retirement Plan), which is a separate plan from either the D&S Plan or the Medical Plan. It is important to note that the survivor benefits involved in this suit are not part of the joint and survivor or early survivor annuity required to be offered under pension plans qualified under Section 401(a) of the Code. Indeed, Petitioner has received, since the time of her first husband's death, a monthly survivor benefit from the Retirement Plan under the preretirement survivor option of that Plan. This benefit was unaffected by Petitioner's remarriage, since it continues even upon remarriage and she will continue to receive this benefit from the Retirement Plan until her death.

ried as that term is used in the Plan.[3] The Committee found that it was the intent of the Plans to sever benefits to a surviving spouse upon remarriage, and such benefits were not to be reinstated even if that marriage was later annulled or otherwise void under state law. In affirming the determination that Petitioner had remarried under the Plan, the Committee was concerned that recognizing annulments as reinstating the right to benefits from the Plans would jeopardize their financial integrity and efficient operation and would expose them to potential abuse.[4] Petitioner subsequently filed suit against the Plans seeking reinstatement of benefits.[5]

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[3] There is no basis for Petitioner's statement that the Committee recognized that Petitioner had not remarried as that term is used in the Plan. In fact, the Committee made just the opposite determination. Similarly, there is no basis for Petitioner's statement that the Committee determined that the term "remarries" required the status of a legally binding obligation.

[4] Petitioner complains that there was no evidence before the lower courts that the Committee based its decision upon these grounds. That is simply not true. The district court had before it to support the Plans' Motion for Summary Judgment an Affidavit of James W. Callison, a member of the Committee, which clearly established the Committee's concerns. Petitioner also complains that the Committee did not have the expertise to make determinations concerning the financial impact of recognizing annulments on the Plans. At the time Petitioner's claim was reviewed, the Committee consisted of Delta's President, Vice Chairman of the Board, and Senior Vice Presidents including the Company's chief financial officer, all of whom had been on the Committee for several years. These executives were certainly familiar with the Plans' funding needs.

[5] Petitioner's Complaint brought under Section 502 of ERISA, sought reinstatement of the denied benefits and made no allegation of breach of fiduciary duty or non-compliance with any statutory or regulatory requirements.

SUMMARY OF ARGUMENT

The question Petitioner presents for review concerns the appropriate standard of review to be used by the district courts when reviewing the actions of ERISA welfare plan administrators in awarding benefits. Since Petitioner did not raise this issue in the lower courts, and indeed took a different position from that which she now takes, the Petition for Certiorari should be denied. In any event, the issue which Petitioner seeks to raise is not of such importance as to warrant the attention of this Court. It is well settled that the arbitrary and capricious standard is the correct standard of judicial review for courts to use in reviewing actions of ERISA plan administrators.

ARGUMENT

I. Petitioner Is Precluded From Questioning the Appropriate Judicial Standard of Review Before This Court Since This Issue Was Not Raised in the Courts Below.

The question which Petitioner asks this Court to address concerns the appropriate standard of review to be used by the district courts in reviewing the actions of ERISA welfare plan administrators in awarding benefits. She now argues that the arbitrary and capricious standard of review used by the district court in reviewing the Committee's decision was improper. This position, however, is the exact opposite of what she argued before both the district court and the court of appeals. It is well settled that issues and arguments not raised in the lower courts cannot normally be raised for the first time before the Supreme Court. *Tacon v. Arizona*, 410 U.S. 351 (1973); *Rogers v. Herman Lodge*, 458 U.S. 613 (1982); *Ramsey v. United Mine Workers*, 401 U.S. 302 (1971); *Adickes v. Kress and Co.*, 398 U.S. 144 (1970).

In her Motion for Summary Judgment, Petitioner submitted that the controlling issue in the case was whether

the Plans had acted arbitrarily or capriciously in denying reinstatement of benefits. Similarly, in the court of appeals, Petitioner did not raise any new issues and one of her primary contentions was that the district court had not followed the arbitrary or capricious standard as it should have done, but had conducted a *de novo* review of Petitioner's claim (which the court had not done). Petitioner's failure to question the standard of review in the lower courts, and indeed her acknowledgement in those courts that the arbitrary or capricious standard was the correct standard of review should preclude her from arguing that the district court should not have used the arbitrary or capricious standard in reviewing the Committee's interpretation of the Plan's terms. Since the Petition for Certiorari does not address any other issues, it should be denied.

II. The Petition for Certiorari Does Not Raise Any Issues Worthy of Consideration By This Court.

Contrary to Petitioner's assertion, there is no confusion as to the correct standard of judicial review for the district courts to apply when reviewing a plan fiduciary's interpretation of plan terms. In such cases, the arbitrary or capricious standard is universally applied. See, *Miles v. New York Teamsters Pension Fund*, 698 F.2d 593 (2nd Cir. 1983), cert. denied, —— U.S. ——, 104 S.Ct. 105 (1983); *Elser v. IAM National Pension Fund*, 684 F.2d 648 (9th Cir. 1982), cert. denied, —— U.S. ——, 104 S.Ct. 67 (1982); *Quinn v. Burlington Northern Pension Plan*, 664 F.2d 675 (8th Cir. 1981), cert. denied, 456 U.S. 928 (1982); *Kolata v. United Mineworkers Pension Trust*, 533 F.Supp. 313 (S.D. W.Va. 1982), affirmed 696 F.2d 990 (4th Cir. 1982) Opinion reported at 3 Employee Benefit Cases 2459 (1982); *Challenger v. Ironworkers Local No. 1*, 619 F.2d 645 (7th Cir. 1980); *Bayles v. Central States, Southeast and Southwest Areas Pension Fund*, 602 F.2d 97 (5th Cir. 1979).

The arbitrary or capricious standard of review insures that courts will not become overly involved in the administration of private employee benefit plans and protects participants from arbitrary actions by plan administrators. So long as the fiduciaries' interpretation of a plan term is reasonable, regardless of whether it is the interpretation urged by claimant, it should be upheld by the courts. This limited review insures that the courts will not substitute their interpretation of the plan for that of the plan administrator, which in turn encourages uniform and consistent administration of the plan for all participants.

The arbitrary or capricious standard of review is also consistent with Congressional intent. The House Conference Report accompanying ERISA[6] specifies that ERISA civil actions are to be regarded in similar fashion to those brought under Section 301 of the Labor Management Relations Act of 1947. At the time ERISA was passed, the federal courts had long applied the arbitrary or capricious standard in the LMRA context. See, *Roark v. Lewis*, 401 F.2d 425 (D.C. Cir. 1968); *Miniard v. Lewis*, 387 F.2d 864 (D.C. Cir. 1967), cert. denied, 393 U.S. 873 (1968); *Haynes v. Lewis*, 298 F. Supp. 331 (D. D.C. 1969). The reference to Section 301 in the Conference Report clearly indicates that Congress intended judicial review of plan administrators' interpretation of plan terms to be limited to a determination of whether such decision was arbitrary or capricious.

Petitioner does not offer any alternative to the arbitrary or capricious standard other than some nebulous ERISA fiduciary requirement which she does not define. As a practical matter, however, the only alternative to the arbitrary or capricious standard is for the district

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[6] Joint Explanatory Statement of the Committee of Conference, H.R. Conference Report No. 93-1280, 93rd Congress, Second Session, Reprinted in 1974, U.S. Code Congressional and Administrative News, pp. 4639, 5106-07.

court to substitute its interpretation of the plan for that of the plan administrator. This would not only create an incredible burden on the district courts, but also would deprive plan fiduciaries of one of their primary responsibilities, that of interpreting plan terms. For nationwide plans such as the D&S Plan and Medical Plan such a policy would lead to different interpretations of the same term, and thus disparate treatment of similarly situated participants. Such a result would be unfair to all participants and violative of ERISA.

CONCLUSION

The Petition for Certiorari should be denied since the issues addressed in this Petition were not raised in the courts below, and in any event are not worthy of consideration by this court on Writ of Certiorari.

Respectfully submitted,

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